

OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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MEMO ENDORSED

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September 2, 2021

Dear Judge Swain,

We write in response to the Court's recent order regarding the Monitoring Team's August 24th Status Report (dkt. entry 379). The Monitoring Team provides this update to advise the Court of the Monitoring Team's recommended steps that the City and Department can and should take *immediately* to address the ongoing dangerous and unsafe conditions in the New York City jails.¹ The Monitoring Team continues to strongly believe that the City and the Department have the authority and the ability to address these issues and must do so immediately, as outlined below.

(1) Improve Basic Security Procedures and Management of the Jails

The Department must curtail the following operational failures within the jails through improved Staff practices and supervision.

- Curtail Security Breaches – Staff must consistently and vigilantly ensure that the housing unit control stations (A-stations) remain securely locked at all times, that vestibule and pantry doors are properly secured, that housing unit entry doors are secured, and individual cells² are secured, and that staff remain on post at all times in the housing units.

¹ The chaos and disorder in the jails has continued since our last report. Earlier this week, one person in custody presumably died by suicide and a Correction Officer sustained serious injuries following an assault by a person in custody.

² The Department reports that it is making efforts to replace a significant number of cell doors at RNDC. This process is ongoing and is expected to be completed by the spring of 2022. This

- Reduce Reliance on Probe Teams – Housing unit Staff and Supervisors must move to de-escalate incidents and timely intervene when they occur on the housing unit., rather than simply standing by and awaiting the arrival of the Probe Team without intervening.
- Process Individuals through Intake Efficiently – incarcerated individuals must be processed through Intake within 24 hours.
- Improve Access to Medical Care – DOC and H+H staff must ensure individuals who require medical services are immediately provided with necessary medical and/or mental health care.
- Reduce Incidents of Self-Harm – Staff must actively monitor and immediately intervene in cases where individuals threaten to or engage in self-harm.
- Provide Basic Services – Staff must ensure that incarcerated individuals have access to food and water.
- DOC must immediately employ all video monitoring capabilities, including the DOC central monitoring unit to supplement direct staff sight and sound surveillance of detainees.

The elements listed above are among the most basic of correctional management strategies. The Monitoring Team has offered to serve as a resource for the City and Department as they, with all dispatch, develop and implement strategies to address these issues within the jails.

(2) Accountability for abuse of Sick Leave or failure to come to work (“AWOL”)

The Department’s high rate of Staff absenteeism must be addressed immediately because the abuse of sick leave and AWOL contributes to overall mismanagement of the Facilities. In order to curb the pervasiveness of this troubling practice, the Monitoring Team recommends that the City and Department immediately address the increasing number of tours in which a Staff member is AWOL. This could be accomplished by:

project, however, will not solve the immediate issues at hand and will not address the overarching issue of poor Staff practice regarding door security.

- Immediately holding accountable Staff who are AWOL for short periods of time (*e.g.* one or two tours) by utilizing suspensions without pay.
- Leveraging City regulations³ and practices to immediately and appropriately discipline Staff who are persistently AWOL (*e.g.*, Staff who are AWOL five consecutive days or more).
- Evaluating all available data and information regarding the significant increase of tours with AWOL Staff or Staff on sick leave during Spring 2021 to ascertain the viability of all legal remedies, including whether a job action has occurred, and then taking appropriate remedial action.

The City and the Department are currently refining a number of longer-term initiatives geared toward: (a) minimizing the high number of staff out on sick leave and (b) holding accountable those Staff with extensive AWOL records. The Monitoring Team is currently evaluating these initiatives and any potential obstacles to implementation, and will provide a more detailed analysis in our next Status Report.

Despite the number of Staff who are not reporting to work as expected, the Department still maintains a sufficient number of Staff to operate the jails, and these Staff must ably and professionally carry out their duties and obligations. Therefore, the Monitoring Team wants to emphasize that while certain issues within the jails may be *exacerbated* by the high level of Staff absenteeism, the many failures to provide adequate security and basic services were not created by the recent staffing problems and thus, the curtailment of Staff absenteeism will not, in and of itself, make the jails safer. In other words, the Monitoring Team must underscore that it does not believe that the Department's rate of Staff absenteeism is either a valid defense nor an acceptable excuse for the current conditions.

³ For instance, New York City Administrative Code § 9-113 Resignation by members of the uniformed force of the department of correction.

Next Steps

The Monitoring Team will provide another Status Report regarding these matters to the Court on or before October 1, 2021⁴. As part of this update, the Monitoring Team will describe the City and Department's actions and plans to address these recommendations and the Monitoring Team's assessment of the potential of the approach to resolve the immediate concerns, including any additional recommendations that may help to alleviate the scope and severity of the current problems.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, *Monitor*

Anna E. Friedberg, *Deputy Monitor*

Christina Bucci Vanderveer, *Associate Deputy Monitor*

The Court continues to find the circumstances described in the recent status reports deeply disturbing and thanks the Monitoring Team for identifying concrete steps and recommendations that may prove helpful and/or necessary for improving the conditions identified in the NYC jails. The Court looks forward to the next status update, expected on or before October 1, 2021, describing the City and Department's plans to address these recommendations and the Monitoring Team's continued assessment of the situation.

SO ORDERED.

9/3/2021

/s/ Laura Taylor Swain, Chief USDJ

⁴ The Monitoring Team also intends to provide the Court with a status report, regarding the concerns identified in the Second Remedial Order Report, no later than October 1, 20201 per the Court's July 2, 2021 order (dkt. entry 377).